identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

DATE: JAN 09 2012 OFFICE: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a computer systems analyst. At the time she filed the petition, the petitioner worked at [redacted] a health maintenance organization (HMO) in Cambridge, Massachusetts. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a statement and background materials relating to her work.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by

increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on April 17, 2009. In an accompanying statement, the petitioner explained why she believes that she qualifies for the waiver:

> I worked with Centers for Medicare on a Pilot program to develop a secure electronic alternative to telephone and written inquiries from providers. The pilot program

> included a secure website on the public internet that allowed pilot providers to get answers. . . .
>
> The other pilot project I worked on was for the Electronic medical record/CERT project model which was geared towards a national appeal to most states given the large effort to both improve the quality of care and reduce costs. The purpose of this pilot was to evaluate the feasibility of migrating providers from telephone and written correspondence to electronic, online, transaction over the public Internet for interaction with the Medicare contractors.
>
> . . . The promise we made was that by centralizing access to medical record information, the solution will improve the convenience to providers and cont[r]actors; and effectively reduce the overall cost of sharing clinical data within the Medicare program. This also ends duplication of diagnostic tests and will allow physicians to share patient history.

The petitioner offered various arguments regarding the advantages of electronic medical records. These arguments attest to the intrinsic merit of the petitioner's work. Such work derives national scope through the introduction of national networks to share medical information. Foundational assertions about electronic medical records, therefore, meet the first two prongs of the three-pronged *NYSDOT* test, but they do not establish a blanket waiver for all qualified workers seeking to establish and improve such a system. It remains for the petitioner to establish that she, as an individual, merits a waiver through her continuing work in the field. In her opening statement, the petitioner did little more than claim involvement in two pilot projects. The AAO now turns to the accompanying evidence to determine the extent and impact of this involvement.

The petitioner offered the following description of her work at [redacted] her employer since January 2007:

- Research and help design and develop solutions for business solutions
- Develop functional specifications for new systems
- Analyzing business functions for the organization
- Modify and improve existing systems
- Implementing business and technical solutions through application of the appropriate software development life cycle methodology
- User acceptance testing
- Develop and Execute Test plans for new and ongoing projects to ensure proper functionality
- Document current and new system processes
- Act as a liaison between the developers and the users
- Using Multi-tasking skills
- Gather business requirements from users

- Manage projects that involve integrating new and modifying current systems into the organization
- Manage ongoing projects, develop training guides, policy and procedures and seminars for new and existing systems
- Compile and submit quarterly and annual reports to the State or Federal government on behalf of the SCO program such as the annual SCO Reports
- Educate users on the use of new system enhancements
- Oversee and manage new software development initiatives for the company
- Provide leadership for new process-re-engineering initiatives that affect beneficiaries or providers
- Develop forms that improve day to day processes or department workflow.

The petitioner submitted information regarding [redacted] a manufacturer of educational software, and a proposal for an interactive web application for Acme Financial Services. The petitioner did not explain the relevance of these projects to her waiver claim (which centered on electronic medical records).

Four witness letters accompanied the initial filing. [redacted] is an assistant professor at [redacted] where the beneficiary earned a B.S. in information systems management. [redacted] praised the petitioner's "scholarly student attitude" and her "special and creative insight to the operations of the Health Care Industry," but offered no specifics.

[redacted] now an application developer for [redacted] was previously the petitioner's "supervisor and mentor . . . at [redacted]" [redacted] praised the petitioner as "an extremely bright and highly motivated employee," but, like [redacted] provided no specific information about the petitioner's contributions.

More details appear in the remaining two letters, both from faculty members at Southern University and A&M College, Baton Rouge, Louisiana. [redacted] an associate professor at the university, stated:

> I have interacted with [the petitioner] professionally and was very impressed with her IT skills. From this experience it is my belief that her strong skills in software developmental [*sic*] and application positively contributes to the overall development of a strategic American industry and hence her presence is critical to the technological advancement of this great nation.
>
> . . . [The petitioner] has not only established herself as an advocate of applied technology especially in the healthcare industry but has also without doubt excelled in her academic endeavors. . . .

> [The petitioner] stands out among her peers as part of a team that has developed the Provider Services Internet Pilot (PSP) a web based secure application that has enabled Medicare providers to look up provider enrollment status, accounts receivable information, claim status and beneficiary eligibility. . . .
>
> [The petitioner] has been a major player in the application of the software developmental life cycle concept in all the new software implementation projects she has worked on. . . .
>
> [The petitioner] participated in introduction of the electronic medical record (EMR) concept to the Medicare program that has been approved. . . .
>
> The solutions made by [the petitioner] make her a viable contributor in effecting the new Medicare reform that has been on going in this county [*sic*] for the last decade.

When considering [redacted] claims about the petitioner's work, the AAO notes that [redacted] claims no special expertise in electronic medical records. He holds degrees in geology, geography and water resources, and is an associate professor of geographic information systems in Southern University's Urban Forestry Program. [redacted] repeatedly praised the petitioner's "solutions," but did not provide any details about what the petitioner actually did in the program.

[redacted] stated:

> [The petitioner] who is now currently working with another healthcare initiative between State and Federal governments which affects the poor and elderly population, has a main initiative to find ways of improving the systems that make up the patients electronic record so that more collaboration between healthcare providers patients and the coordination between Medicare and Medicaid can be better facilitated between these varies [*sic*] entities.
>
> . . . [The petitioner] worked with the SNP [Special Needs Program] Alliance to help provide quantitative data that was used to convince congress to get the moratorium lifted through Medicare legislation.

[redacted] stated that the petitioner "has . . . distinguished herself as a force," is "actively involved in seeking solutions to improve how the Medicare system works," and that "[t]his area will suffer a setback if her current work is halted." Like [redacted], however, [redacted] vaguely credited the petitioner with major contributions without actually describing those contributions. Like the other witnesses, [redacted] claimed no involvement in the Medicare project.

The petitioner submitted documentation relating to the Provider Services Internet Pilot prepared by the [redacted] and "Re-Submitted Sept 23, 2004," some four and a half years prior to the petition's filing date. The record contains no documentation of the extent of the pilot project's implementation. The materials in the record provide little information about the petitioner's role in the project, apart from a page marked "User Acceptance Testing Specifications / Provider Services Internet Pilot / Website Navigation," followed by the petitioner's name. The petitioner left [redacted] in late 2005.

Another document, entitled [redacted] and dated October 17, 2008, identified the petitioner as its author. The report appears to be a compilation of data obtained from various program participants.

On February 10, 2010, the director issued a request for evidence, instructing the petitioner to "submit any available documentary evidence" of her "influence as a computer systems analyst" that sets her apart in her field. In response, the petitioner essentially repeated her prior claims and submitted copies of news articles, press releases and reports about [redacted] Medicare reform and electronic medical records. The published materials, like those submitted previously, addressed the intrinsic merit and national scope of the overall issues but did not mention the petitioner, much less shed light on her contributions.

The petitioner submitted another copy of the October 17, 2008 report in her name, but this document, on its face, does not show that the petitioner did anything other than assemble data into tables. It is not self-evident that it is in the national interest for the petitioner, rather than another qualified worker, to be the one preparing reports of this kind.

The director denied the petition on October 18, 2010. The director acknowledged the intrinsic merit and national scope of the projects on which the petitioner has worked, but stated that the witness letters and other evidence "fail to demonstrate why a labor certification would be inappropriate in this case." The director stated: "her involvement with the pilot programs in itself is not indicative of achievements or influence on the field, or that she has a past record of specific prior achievements which justifies projections of future benefit to the national interest."

On appeal, the petitioner states:

> I played a leadership role on the Provider Services Internet Project and the Electronic medical records project and a third IVR (internet voice recorder[)] project. The project was used as a baseline by [redacted] to asses[s] the way to move forward on the continued effort to modernize, cut costs and reduce redundancy between provider services and Medicare beneficiaries. My involve[me]nt including [*sic*] the designing and creating the actual provider database that housed the sample pool of providers both in N.E. and CA. I also created and conducted the Testing and Test Plans. . . . As part of the project management team, I also provided initial analysis and design for the Beneficiary eligibility, Claims Summary, Provider enrollment, Provider summary,

> Accounts receivable screens for the application. Centers for Medicaid & Medicare has [*sic*] since rolled this out and the application is available for providers and Medicare Beneficiaries. This contribution clearly demonstrates my abilities and the impact this had on the Dept. of Health's initiative to work on improving the quality of care to Americans and also reducing costs by using IT to be more efficient. . . .
>
> Most recently in 2008 I worked on another project to provide Quantitative analysis to the Special Needs Plan Alliance which gave this data collectively to the National Institute of Health, who used it to provide policy makers in the health Finance committee in congress make [*sic*] a decision on the Medicare Special needs plans moratorium.

The petitioner submits further printouts and information sheets relating to various past projects. As before, these documents, at best, reflect her involvement in the projects, and sometimes they do not even do that much. The petitioner has submitted no objective, documentary evidence to establish not only the (uncontested) importance of the projects themselves, but the impact of her specific work on these projects. The record does not show how the petitioner has shaped the progress of the various initiatives, or why it would be in the national interest to ensure her continued involvement. The petitioner has simply established her involvement, and declared it to be important to the success of the various projects.

The petitioner has asserted that her work has been important to various federal agencies and federally funded projects, but the record contains nothing from any involved federal agency to confirm or shed light on these claims. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.